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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-seventh session

SUMMARY RECORD OF THE 1431st MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 22 August 2000, at 10 a.m.

Chairman: Mr. SHERIFIS

later: Mr. VALENCIA RODRÍGUEZ
(Vice-Chairman)

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The meeting was called to order at 10.10 a.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

Draft general recommendation on racial discrimination by individuals (document without a symbol circulated in English only)

1. The CHAIRMAN invited Committee members to consider a draft general recommendation on racial discrimination by individuals, which had been drafted by Mr. Banton following informal Committee discussions.

Paragraph 1

2. Mr. BANTON proposed that in line 2, after the word "territories", the following should be added: "and that therefore they do not need to adopt legislative, judicial, administrative or other measures to give effect to the provisions of the Convention".

3. Mr. ABOUL-NASR asked why the title of the draft general recommendation referred to individuals, given that the Convention was addressed to States parties, persons and groups of persons. The recommendation did not appear to add anything to the provisions of article 4 of the Convention. Moreover, as the Committee had already made it clear that States parties' argument that racial discrimination did not exist and there was consequently no need to take measures to combat it was unacceptable, it appeared superfluous to repeat the argument in the draft general recommendation under consideration.

4. Mr. BANTON explained that the title used had been approved by the Committee at its March 2000 session. It was, however, equally acceptable to refer to a draft general recommendation in relation to article 9 of the Convention. It was true that the Committee had on many occasions heard the unacceptable argument to which Mr. Aboul-Nasr had referred. The point was that the argument was often put forward by States where there were no distinctive groups based on race or colour but rather a continuum covering different shades from dark to light which gave rise to discrimination. The wording used was a means of encompassing that whole spectrum. In that respect, the wording proposed added something new to previous statements.

5. The CHAIRMAN questioned the need for the term "private" in the penultimate line of the paragraph and suggested its deletion.

6. Mr. BANTON said that the term "private individuals" was to be compared with "State officials".

7. Mr. BOSSUYT proposed the addition of a new second sentence to the paragraph, to read: "The Convention not only prohibits racial discrimination practised by the authorities of the States parties, but requires also that the States parties take the necessary measures to prevent and punish racial discrimination practised by individuals or groups of individuals within their jurisdiction". Such wording would explain the use of the term "individuals" in the title.

8. Mr. BANTON accepted the wording proposed by Mr. Bossuyt.

9. The CHAIRMAN said he took it that, in the light of the amended first and second sentences, the Committee accordingly wished to delete the current second and third sentences.

10. Mr. RECHETOV said, in connection with the reference to authorities, that States parties had a tendency to present the situation in their countries as viewed only by their national Governments. In the draft general recommendation, the phrase "at the national and local level" could therefore usefully be added after the term "authorities", so as to conform with the wording of the Convention.

11. Mr. ABOUL-NASR said that, by producing a new general recommendation, the Committee was overburdening States parties with requests which were in fact less substantive than the provisions of the Convention, notably, in the case under consideration, the much stronger wording of article 2.1 (a). The draft general recommendation under discussion added nothing to the requirements under the Convention but merely served to confuse those who wrote the reports of States parties.

12. The CHAIRMAN said that the Committee should decide whether the draft general recommendation was needed or not and invited it to vote by a show of hands on whether to continue consideration of the draft.

13. The proposal to continue consideration of the draft general recommendation was adopted by 5 votes to 3, with 2 abstentions.

14. The CHAIRMAN asked whether paragraph 1, as amended, was acceptable to the Committee.

15. Paragraph 1, as amended, was adopted.

Paragraph 2

16. Mr. RECHETOV, supported by Mr. SHAHI, said that, in accordance with the spirit of the Convention and the definition of racial discrimination in article 1, the phrase "less favourably" in the fourth line of the paragraph should be replaced by "in a discriminatory manner". The use of the term discriminatory implied that the treatment given to an individual was less favourable than to other people.

17. Mr. ABOUL-NASR asked whether a situation where an individual was treated less favourably than other people, but not on the grounds stated, constituted a violation of the Convention. For example, if a father gave more money to one of his children than to the others, would that be prohibited as being discriminatory?

18. Mr. BOSSUYT said that a reference to discrimination in relation to rights and freedoms appeared to be missing from the paragraph. Situations relating only to an individual's private life, not being governed by any laws, were not prohibited. Discrimination came into play only once a legal rule had been breached.

19. Mr. BANTON said that the paragraph had been written in the simplest terms possible for the reader. One difficulty was that certain people had a fixed idea of the nature of discrimination, insofar as they made a moralistic interpretation of an individual's bad intent. The use of the phrase "less favourably" was preferable as it made the issue a factual one in that it compared the treatment given to different people. In response to Mr. Aboul-Nasr, the paragraph did not cover anything other than the grounds prohibited under the Convention. Any further reference to the fact that the Committee was concerned only with areas of public life would make the paragraph unnecessarily unwieldy. He proposed that the current wording should therefore be retained.

20. Mr. SHAHI suggested that the phrase "on less than an equal footing" could be used, in keeping with article 1 of the Convention, as an alternative to "less favourably".

21. Mr. BOSSUYT said that the alternatives proposed by Mr. Shahi and Mr. Rechetov were both acceptable, but that Mr. Rechetov's proposal was closer to the language normally used. It would be better if the phrase "in the enjoyment of rights and freedoms" was inserted after the term "others" in the fourth line.

22. Mr. BANTON said that that proposal was acceptable, reiterating his preference for the phrase "less favourably".

23. Mr. DIACONU said that he, too, preferred "less favourably", which to his mind tallied precisely with the references to distinction, exclusion and restriction in article 1.1 of the Convention.

24. Mr. RECHETOV highlighted the serious nature of the issue under consideration and urged a cautious approach. Since one of the most important countries in the world had removed the whole scope of private relations from what it regarded as the Committee's jurisdiction, the draft general recommendation produced could be considered by the representatives of that country to be directed against the forthcoming submission and discussion of their country's report. In response to Mr. Bossuyt's comment, he said that discriminatory treatment seldom resulted immediately and directly in the deprivation of an individual's human rights; negative consequences might emerge, only at a later date; he was therefore dubious about a direct reference to human rights in that connection. Discriminatory treatment based on the grounds of race and nationality was, however, prohibited under the Convention. Careful wording was required.

25. Mr. BOSSUYT endorsed the comment that discrimination based on race could exist without necessarily resulting in the deprivation of rights. It was sufficient for there to be unequal enjoyment of rights by two separate individuals in order for discrimination to exist. Reference should be made not just to human rights but to the enjoyment of rights, which might be broader than fundamental rights depending on the laws in force. The addition of the phrase "in the enjoyment of rights and freedoms" was not intended to restrict the nature of the rights in question or to signify that discrimination existed only where an individual was deprived of his or her rights.

26. After a brief discussion in which Mr. BANTON, Mr. BOSSUYT and Mr. DIACONU took part, the CHAIRMAN said that the paragraph would read as originally worded, the sole amendment being that the phrase "in the enjoyment of rights and freedoms" should be inserted after the words "may nevertheless treat others".

27. Paragraph 2, as amended, was adopted.

Paragraph 3

28. Mr. VALENCIA RODRÍGUEZ requested clarification concerning the substance and scope of the paragraph. The Committee, by requesting objective and subjective information of the kind mentioned, would place an additional reporting burden on States parties. There was no obligation to provide such information under the terms of the Convention, and many developing countries which lacked resources would not be in a position to meet the Committee's request.

29. Mr. BANTON said that it was not his intention to place an additional reporting burden on States. The wording of the text made it clear that the Committee was simply requesting any such data if it was available. In many countries the press and media supplied such information, which was clearly of interest to the Committee.

30. Mr. BOSSUYT suggested that the words "of any experimental test" should be deleted from the third sentence so as to help meet the concerns expressed by Mr. Valencia Rodríguez. While statistics could point to the existence of racial discrimination, they were not in and of themselves sufficient to prove its existence. Therefore, in the second sentence, following the words "This information", the phrase "which may give an indication of the existence of discriminatory practices" should be inserted between commas.

31. Paragraph 3, as amended, was adopted.

Title of the draft general recommendation

32. Following a discussion in which Mr. BANTON, Mr. de GOUTTES, Mr. SHAHI and Mr. DIACONU took part, the CHAIRMAN said he took it that the general recommendation should be entitled: "General Recommendation on Information on Racial Discrimination by Individuals (relating to article 9 of the Convention)".

33. It was so decided.

34. The CHAIRMAN invited the Committee to consider the adoption of the draft general recommendation as a whole.

35. Mr. ABOUL-NASR objected to the adoption of the general recommendation and said that if the Committee were to take a vote, he would vote against it.

36. Mr. RECHETOV said that the adoption of the general recommendation would appear arbitrarily to alter the current definition of racial discrimination, which was the very basis for the Committee's work. Mr. Diaconu had in an earlier statement cited distinction, exclusion and

restriction, but had completely overlooked preference when referring to elements contained in the definition of racial discrimination under article 1 of the Convention. In the history of the Soviet Union and many other countries, it was precisely the preferential form of racial discrimination which had been problematic, for example in hiring practices. He was saddened that the majority of the Committee members did not appear to understand the consequences of a restrictive interpretation of article 1, paragraph 1 and hence of the adoption of such a document.

37. Mr. DIACONU said that he considered the full definition in article 1 to be valid, and had simply overlooked the word "preference" in citing the definition. In any event, the draft general recommendation should be considered in the light of its main objective, which was to request States to provide the Committee with more information, be it subjective or objective, on racial discrimination. It was not intended to furnish a judgement on the question of what constituted racial discrimination.

38. Mr. BOSSUYT said that, while he did not endorse the objections expressed by Mr. Rechetov, he understood why he and some other members might have certain reservations about the adoption of the draft general recommendation in its current form. As there was no need for haste in adopting the recommendation, he suggested that its adoption should be deferred until the next session so as to give Committee members time to reach a consensus.

39. Mr. VALENCIA RODRÍGUEZ reiterated his reluctance to adopt a text which apparently placed on States parties a reporting burden that was not provided for in the Convention. He endorsed Mr. Bossuyt's proposal to defer the adoption of the draft general recommendation.

40. Mr. de GOUTTES observed that postponement would make it possible to translate the text into other languages prior to final adoption.

41. The CHAIRMAN said he understood that the Committee wished to defer the final adoption of the draft general recommendation until the next session.

42. It was so decided.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Draft concluding observations concerning the thirteenth and fourteenth periodic reports of Sweden (CERD/C/57/Misc.35/Rev.2) (continued)

43. Mr. de GOUTTES (Country Rapporteur) said that the text before the Committee incorporated amendments suggested by other members.

Paragraph 1

44. Paragraph 1 was adopted.

45. Mr. Valencia Rodríguez, Vice-Chairman, took the Chair.

Paragraph 2

46. Mr. ABOUL-NASR suggested that the word "delegation" in the final sentence should be replaced by "State party".

47. Paragraph 2, as amended, was adopted.

Paragraph 3

48. Paragraph 3 was adopted.

Paragraph 4

49. Mr. ABOUL-NASR asked whether paragraph 4 was really relevant to the provisions of the Convention.

50. Mr. de GOUTTES (Country Rapporteur) said that the Committee had discussed the Council of Europe's Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages at length with the delegation and in any case questions dealing with regional minorities or minority languages were arguably relevant to the provisions of the Convention.

51. Mr. ABOUL-NASR said that, if the Committee chose to note every case of ratification of a relevant instrument by Sweden and other European States parties, it should do so for all States parties, including for example African States when they ratified their relevant regional instruments; that being said, he saw no need at all for such references.

52. Mr. DIACONU suggested that deletion of the paragraph would resolve any disagreement and would not involve any loss of substance for the concluding observations as a whole.

53. Mr. de GOUTTES (Country Rapporteur) said he took Mr. Aboul-Nasr's point and accepted Mr. Diaconu's suggestion to delete the paragraph.

54. Paragraph 4 was deleted.

Paragraph 5

55. Paragraph 5 was adopted.

Paragraph 6

56. Mr. BRYDE suggested that the word "facilitate" should be replaced by "encourage".

57. Paragraph 6, as amended, was adopted.

Paragraph 7

58. Paragraph 7 was adopted.

Paragraph 8

59. Mr. ABOUL-NASR said that such a statement had no place in the Committee's concluding observations; it was not the Committee as a whole that welcome States parties' efforts to involve non-governmental organizations (NGOs) in preparing their periodic reports, but only some members. All States parties did not do so, the situation was often different from one State party to another and the Committee should neither criticize nor welcome such efforts, which in any case were not called for in the Convention.

60. Mr. BRYDE suggested deleting the words "preparation of its thirteenth and fourteenth periodic reports and generally in the".

61. Mr. de GOUTTES (Country Rapporteur) said that Mr. Aboul-Nasr's concern might be met by accepting the amendment suggested by Mr. Bryde; alternatively the Committee might consider that the point was covered by the reference in the third line of paragraph 21 to "dialogue with civil society", in which case paragraph 8 could be deleted.

62. Mr. PILLAI said that it would be acceptable to delete the paragraph, assuming that the relevant language in paragraph 21 was retained. He recalled, however, that a number of members of the Committee had indeed referred to the role of civil society, including NGOs, in the preparation of reports, and said that a possible solution would be to reword the sentence to the effect that some members appreciated the participation of civil society organizations in the preparation of the country reports.

63. Mr. FALL agreed with Mr. Pillai's suggestion to refer to "some members", a formulation which had been used by the Committee in the past. The tendency among some States parties to involve civil society in the preparation of their periodic reports was a welcome one and should be encouraged.

64. Mr. ABOUL-NASR approved of the amendment suggested by Mr. Pillai, which could be worded along the lines of the Committee's statements in relation to article 14. He personally approved of States parties involving civil society in the preparation of reports, but felt that the Committee would be going too far if it tried to impose such participation on all States parties.

65. Mr. de GOUTTES (Country Rapporteur) accepted the amendment suggested by Mr. Pillai, expressing the hope that the relevant language in paragraph 21 would be retained.

66. Paragraph 8, as amended, was adopted.

Paragraph 9

67. Mr. ABOUL-NASR said that it might be inappropriate for the Committee to note with appreciation what was still only an "intention" on the part of the State party.

68. Mr. de GOUTTES (Country Rapporteur) agreed with that comment and suggested replacing the words "notes with appreciation" with "encourages".

69. Paragraph 9, as amended, was adopted.

Paragraph 10

70. Paragraph 10 was adopted.

Paragraph 11

71. Mr. ABOUL-NASR questioned the Committee's expression of concern about examples of the recent upsurge in racism in Sweden, when such phenomena existed in many other European countries as well - a point which should perhaps be made.

72. Mr. BRYDE said he was not convinced of the State party's commitment to the elimination of racial discrimination and consequently suggested that, in the first two lines, the words: "While the Committee notes ... racial discrimination, it" should be deleted so that the first sentence began: "The Committee is concerned that ...". Furthermore, if the Committee noted Sweden's commitment to human rights and the elimination of racial discrimination, it would be obliged to do the same for other States parties. He further suggested that, in the second and third lines, the words "despite the amelioration of economic conditions in the country" should be deleted as being superfluous.

73. Mr. BANTON said in response to Mr. Aboul-Nasr that the "white power" music phenomenon was distinctively Swedish; the proceeds from that music were used to fund racist organizations and it was therefore perfectly appropriate to make specific reference to it.

74. Ms. JANUARY-BARDILL asked if Mr. Aboul-Nasr could clarify his objection and supported Mr. Banton's comment on the reference to "white power" music. Sometimes the Committee's recommendations and observations were too general and it would perhaps be helpful to provide States parties with something specific on which to focus their attention.

75. Mr. de GOUTTES (Country Rapporteur) said in response to Mr. Aboul-Nasr that the Committee had reviewed the situation in Sweden in depth and it was preferable to confine the Committee's observations to the situation in the State party in question. He agreed with the first amendment suggested by Mr. Bryde but did not agree with the second, because a poor economic climate was often used as a justification for racism and xenophobia, whereas, in the case of Sweden, the economic situation was much improved and the State party should therefore be called upon to explain why racism and xenophobia continued to grow.

76. Mr. BANTON supported both amendments suggested by Mr. Bryde and, like him, had not been impressed by the State party's commitment to eliminate racial discrimination. Successive periodic reports referred to the need to do something and to what was being done, and yet the situation did not seem to change. That was in stark contrast to the State party's highly successful efforts to eliminate gender discrimination, for example.

77. Mr. FALL agreed with the amendments suggested by Mr. Bryde and pointed out that in any case the Committee had already, in paragraph 7, noted many initiatives under way to reduce racial discrimination. It was important to maintain the reference to "white power" music because such activities everywhere must be denounced and stigmatized, in accordance with the Convention.

78. Mr. RECHETOV agreed with the comments made by Mr. Bryde, Mr. Banton and Mr. Fall; as a former country rapporteur for Sweden, he was not convinced either that the State party was fully committed to the elimination of racial discrimination.

79. Mr. de GOUTTES (Country Rapporteur) confirmed that paragraph 7 already listed the State party's numerous initiatives to eliminate racial discrimination. He conceded that an improved economic climate, while especially effective in reducing discrimination against foreign immigrants, had less effect on the growth of neo-Nazi groups, as was more particularly the case in Sweden. He therefore agreed to the deletions suggested by Mr. Bryde in lines 1 to 3. The beginning of the amended paragraph would accordingly read "The Committee is concerned that a recent upsurge ...".

80. Paragraph 11, as amended, was adopted.

Paragraph 12

81. Mr. FALL suggested that the word "participation" in the first sentence should be replaced by "integration".

82. Mr. ABOUL-NASR cautioned against the use of the word "integration", to which the Roma themselves had objected, since it could be interpreted as meaning assimilation and the loss of identity, culture and language.

83. Mr. PILLAI concurred, stating his preference for "participation".

84. Mr. de GOUTTES (Country Rapporteur) agreed that the word "integration" could be subject to misinterpretation, which was why he had chosen the more general term "participation".

85. Mr. FALL reiterated his preference for the word "integration", but said he would not object if the Committee wished to retain the text as it stood.

86. Ms. JANUARY-BARDILL proposed "acceptance" as an alternative.

87. Ms. McDOUGALL suggested adding the words "and to end their marginalization in society" at the end of the paragraph.

88. Mr. ABOUL-NASR said that "marginalization" was a somewhat unclear concept and "acceptance" was rather weak. It was important to stress the need for equal treatment and the elimination of discrimination. He suggested that the text should be retained as it stood.

89. Paragraph 12 was adopted.

Paragraph 13

90. Mr. ABOUL-NASR said he felt that, in the last sentence, the State party should be urged to do more than "consider" the extension of language rights to all Sami territory.

91. Mr. BRYDE observed that the word "consider" would be appropriate if the Committee's recommendation referred also to other ethnic minorities, but that in relation to the Sami the term was indeed not strong enough.

92. Mr. BOSSUYT recalled that there had been a difference of opinion between the Government and the Sami Council on the extent to which the Sami language was used throughout Sami territory. He doubted that the Committee was in a position to determine who was right, and thought it would therefore be more prudent to keep the current wording.

93. Mr. de GOUTTES (Country Rapporteur) said that the facts were unclear to him as well, although he knew that Sami was the official language in only some Sami areas. He preferred to retain the text as it stood.

94. Paragraph 13 was adopted.

Paragraphs 14, 15 and 16

95. Paragraphs 14, 15 and 16 were adopted.

Paragraph 17

96. Mr. BRYDE said that he found the text extremely vague, and also in no way specific to the Convention, and wondered why it had been included.

97. Mr. BANTON said that the paragraph would be more relevant if it was specified that the Ethnic Discrimination Ombudsman, rather than simply "the Ombudsman", should be fully empowered to carry out his duties.

98. Mr. de GOUTTES (Country Rapporteur) explained that paragraph 17 had originally had an initial sentence expressing regret that the Ethnic Discrimination Ombudsman was not empowered to seize Swedish courts in fields other than discrimination in employment, but that it had been deleted at the suggestion of several members.

99. Mr. BOSSUYT observed that it was certainly not up to the Committee to determine what the Ombudsman's duties should be.

100. Mr. BRYDE said that apparently the concern had been that the Ombudsman had not been given broad enough duties. Without that initial sentence, the paragraph was superfluous, and he proposed that it should be deleted.

101. Mr. de GOUTTES said that he would have no objection to deleting the paragraph.

102. Paragraph 17 was deleted.

Paragraph 18

103. Mr. ABOUL-NASR observed that the statement in the second sentence appeared to contradict the relevant provisions of the Convention concerning distinctions allowed between citizens and non-citizens.

104. Ms. ZOU noted that the text referred variously to "immigrants" and "foreigners", and wondered if both terms were meant to refer to the same group of persons.

105. Mr. BOSSUYT said that the proper reference throughout should be to "members of ethnic minorities", because it was only towards them that the State party had any obligations under the Convention. Accordingly, he proposed deleting the phrase "the high level of unemployment among immigrants and" in the first sentence; deleting the entire second sentence; and deleting the phrase "reduce unemployment among immigrants and" in the third sentence.

106. Mr. de GOUTTES (Country Rapporteur) concurred.

107. Paragraph 18, as amended, was adopted.

Paragraph 19

108. Mr. BANTON, supported by Mr. de GOUTTES, proposed the insertion, in the first sentence, of the word "public" between the words "other" and "places".

109. Paragraph 19, as amended, was adopted.

Paragraph 20

110. Mr. BANTON observed that the Swedish Government collected data in terms only of occupation, not of ethnic origin, and would therefore not be able to provide statistics on the Sami as such or on the Finnish or Roma minorities. More general wording would be preferable, and he suggested deleting the end of the sentence, after "statistical information" and replacing it with the phrase "along the lines of paragraphs 8 and 9 of the Committee's reporting guidelines".

111. Mr. RECHETOV observed that the Finnish minority was not vulnerable to social marginalization as were the Sami and Roma minorities and that, unless the text was amended as proposed by Mr. Banton, the word "Finnish" should be deleted.

112. Mr. de GOUTTES (Country Rapporteur) said that he supported Mr. Banton's amendment.

113. Paragraph 20, as amended, was adopted.

Paragraph 21

114. Mr. ABOUL-NASR asked whether the term "civil society" in the second sentence meant anything other than NGOs.

115. Mr. de GOUTTES (Country Rapporteur) said that the notion of civil society was a recent one that encompassed more than NGOs in the strict sense: it could include also associations of any kind, representatives of cultural or ideological movements or of a particular current of thought, and also the individuals that made up the public. It referred, in other words, to all that was not the State.

116. Mr. BOSSUYT, supported by Mr. de GOUTTES (Country Rapporteur), proposed, for the sake of consistency with other concluding observations, that the first and second sentences of paragraph 21 should be retained and that the third sentence should become a separate final paragraph.

117. Paragraph 21, as amended, was adopted.

118. New paragraph 22 was adopted.

119. The draft concluding observations concerning the thirteenth and fourteenth periodic reports of Sweden as a whole, as amended, were adopted.

The meeting rose at 12.45 p.m.